



Patrimoine  
canadien

Canadian  
Heritage

# SUMMARY: AMENDMENTS TO THE *BROADCASTING ACT*

November 2020

Lac Laberge, Territoire du Yukon, Canada. Shutterstock

# Table of Contents

Introduction	3
Background: Broadcasting in Canada	5
Issue: The need to modernize the <i>Broadcasting Act</i>	7
Proposal: Bill to Amend the <i>Broadcasting Act</i>	10
Conclusion	19
Appendices	20

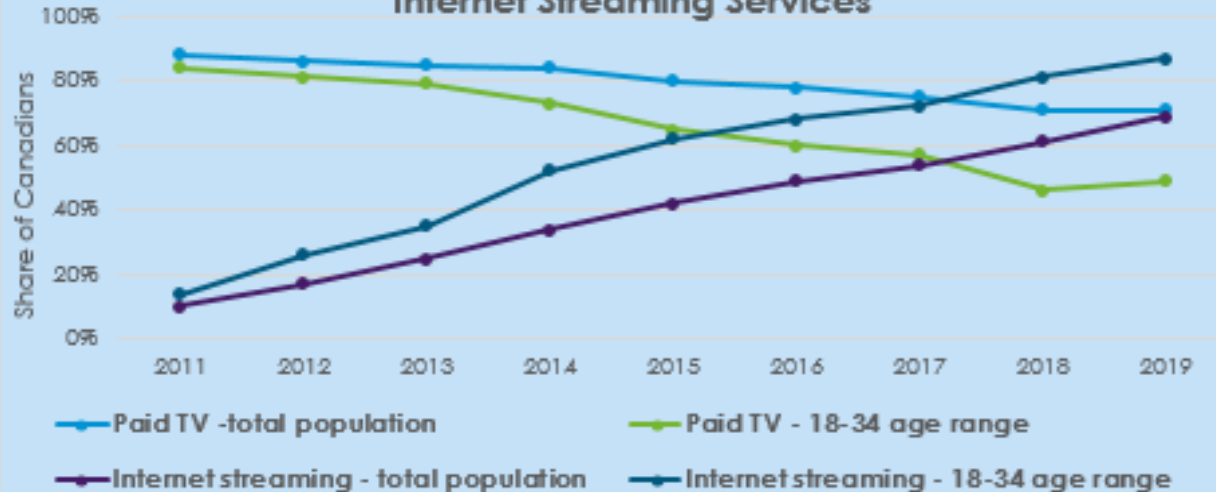
# Introduction

- Canada has a long history of supporting the creation of and access to Canadian film, music, television and digital media programming, while at the same time facilitating Canadians' access to foreign content.
- Historically, a “closed” broadcasting system oriented around Canadian ownership and control of businesses showing Canadian content.
- Today, with the increase in programming being consumed over the Internet, the legislative and regulatory framework for broadcasting needs to be modernized.

# Canada's Broadcasting System

## KEY TRENDS

Percentage of Canadians who Subscribe to TV and Internet Streaming Services



Online broadcasters are an increasingly integral part of Canada's broadcasting system, with traditional broadcasters declining.

## ECONOMIC IMPACT

Broadcasting and the sectors it supports have a **significant economic impact**.



### Broadcasting

GDP: \$9.1 billion  
Revenues: \$16.9 billion  
Jobs: 41,901



### Film and Video

GDP: \$4.3 billion  
Revenues: \$13.9 billion  
Jobs: 71,027



### Music and Sound Recording

GDP: \$637 million  
Revenues: \$577 million  
Jobs: 8,986

# BACKGROUND: BROADCASTING IN CANADA

# Broadcasting and Culture

- Supporting the production of Canadian stories and music and ensuring it is available and accessible are key objectives of cultural policy in Canada.
- Broadcasting is a key means in supporting these objectives.
- The Canadian Radio-television and Telecommunications Commission (CRTC), as the regulatory agency responsible for the broadcasting sector, ensures that broadcasting undertakings invest in Canadian content, and make this content accessible and available to Canadians.
- This regulatory framework has supported creators and producers of Canadian content and has generated significant social and economic benefits for Canada.

# ISSUE: THE NEED TO MODERNIZE THE *BROADCASTING ACT*

---

# Shifting Marketplace

- More and more, Canadians access music and television through on-demand services like Netflix, Spotify, Crave, CBC Gem and Club Illico.
- Online video services have grown their revenues by approximately 90% per year over the last two years, while traditional broadcasters have seen a steady decline of 1.8% per year over the last five years.
- The shifting market dominance is illustrated by Netflix, which is now present in most Canadian households (62%) and generated \$1 billion in revenue in Canada in 2019.
- However, online broadcasters are not required to support Canadian music and storytelling and other important broadcasting objectives.



# Sustainable Support for Canadian music and stories

- As the revenues of traditional radio and television broadcasters stagnate and decline, so does the level of support for Canadian content.
- In contrast, while the revenues of online broadcasters grow, they are not required to contribute to Canadian music and storytelling.
- The support system for Canadian content is at risk.
- Furthermore, it perpetuates a regulatory imbalance, which puts traditional Canadian broadcasters at a competitive disadvantage compared to online broadcasters.

# PROPOSAL: BILL TO AMEND *THE BROADCASTING ACT*

# Approach to Legislative Amendments

- The aim of this approach is to address certain key recommendations in the final report of the Broadcasting and Telecommunications Legislative Review Panel, published in January 2020.
- The amendments empower the CRTC to implement a modernized broadcasting regulatory framework, to ensure both traditional and online broadcasting undertakings contribute in an appropriate manner to the Canadian broadcasting system.
- This is an important first step, but further reforms will be required to fully modernize the broadcasting system and how Canada supports the creation and production of audio and audiovisual content in the digital age.

# Key Objectives of the Bill

Inclusion of Online Broadcasting

Clarify that online broadcasting is within scope of the Act

Update Broadcasting / Regulatory Policy

Better reflect Indigenous peoples, persons with disabilities and Canada's diversity

Renewed Approach to Regulation

Fair and equitable treatment as between online and traditional broadcasters

Modernized Enforcement Powers

Introduce an administrative monetary penalties regime

Oversight and Info-Sharing

Add more explicit information sharing and confidentiality provisions

## Inclusion of Online Broadcasting

- The Bill creates a new category of broadcasting undertaking — the “online undertaking”.
  - Defined to mean undertakings for the transmission or retransmission of programs over the Internet.
- Amendments clarify that undertakings, whether carried on in whole or in part within Canada, that transmit programs over the Internet, including on an on-demand basis, fall within the scope of the Act.
- Importantly, the Bill provides that regulation **does not apply** to users of social media services or social media services themselves in respect of the content posted by their users.
- The Bill does **not** extend the existing licensing power to online undertakings.
- Rather, a more flexible approach allows the CRTC to tailor conditions of service to be applied to online undertakings, individually or as part of a class, as appropriate.

## Update Broadcasting / Regulatory Policy

- The Bill updates key elements of the broadcasting policy for Canada to better reflect Indigenous peoples, persons with disabilities and Canada's diversity in the broadcasting system. Specifically:
  - *programming that reflects the Indigenous cultures of Canada and programming that is in Indigenous languages should be provided within the Canadian broadcasting system, including by programming undertakings that are carried on by Indigenous persons;*
  - *programming is accessible without barriers to persons with disabilities and should be provided within the Canadian broadcasting system; and*
  - *Canada's broadcasting system should serve the needs and interests of all Canadians — including Canadians from racialized communities and Canadians of diverse ethnocultural backgrounds, socioeconomic statuses, abilities and disabilities, sexual orientations, gender identities and expressions and ages*

## Renewed Approach To Regulation

- The CRTC to be given new flexible powers to impose “conditions of service”. For example, orders could be issued in support of the discoverability of Canadian programs or the provision of information to the CRTC.
- The CRTC to be given express powers to require broadcasting undertakings, including online undertakings, to make financial contributions to support Canadian music, stories, creators and producers.
- Financial contributions would be aimed at addressing the projected stagnation and decline in the level of support for Canadian content, and provide a more sustainable source of support. Contributions could also support public interest participation in CRTC proceedings.
- If the CRTC requires online broadcasters to contribute to Canadian content at a similar rate to traditional broadcasters, online broadcasters’ contributions to Canadian music and stories could amount to as much as \$830 million by 2023.

## Modernized Enforcement Powers

- The Bill allows for the imposition of administrative monetary penalties (AMPs), which would align the CRTC's enforcement powers with how it regulates telecommunications and spam.
- Violations would, among other things, include:
  - non-compliance with regulations or orders;
  - broadcasting when prohibited from doing so; and
  - failing to submit required information to the CRTC.
- The objective of the AMPs scheme is to promote compliance with the Act, not to punish.



## Oversight and Information Sharing

- The Bill modernizes the process by which policy directions are issued by the Governor in Council (GIC) to the CRTC, rendering the process more transparent and more streamlined in order to be more responsive.
- The Bill also modernizes the process by which the GIC can set aside or refer decisions back to the CRTC. The separation of conditions from the licensing process will result in petitions only being applied to decisions to issue, amend or renew a licence. This supports the CRTC's independence with respect to the establishment of conditions.
- To facilitate effective oversight, the CRTC also to be granted more explicit information gathering powers, along with clear authority to share information with the Minister of Canadian Heritage, the Chief Statistician and the Commissioner of Competition.
- Finally, confidentiality provisions complement the information gathering powers to ensure that commercially sensitive information is protected.

# Next Steps: Further Measures to Provide for a Sustainable and Equitable Regulatory Framework for Broadcasting

*The Minister of Canadian Heritage may recommend to the Governor in Council to issue a direction to the CRTC on key priorities...*

## Seek contributions from online broadcasters

Assess which **online broadcasters** should be regulated and ensure that such services are required to contribute appropriately.

Ensure support for **French language and Indigenous creators and producers**.

Not regulate **video games**.

## Regulatory fairness

Address **regulatory asymmetries**.

Provide flexibility and predictability, while recognizing the **distinct business models** in the modern Canadian broadcasting system.

## Support diversity & inclusion

Ensure support for programs created and produced by **racialized groups, official language minority communities, women, and LGBTQ+ communities**.

Support programs being made **accessible** to people with disabilities.

## Definition of "Canadian Program"

Revisit how it **defines** Canadian programs for the purposes of broadcasting regulatory obligations.

Ensure that its definition:

- takes into account the government of Canada's **other Canadian content policies of relevance**, such as **tax credits**
- recognizes the importance of **Canadian ownership of intellectual property**.

## Incentives

This could include considering giving **additional regulatory credits** to broadcasting activities that are culturally desirable, but otherwise less likely to be produced, such as supporting **Indigenous peoples, French-language creators and racialized and ethno-cultural communities**.

## Music

Consider which regulatory tools would be most suitable to address **fair and transparent remuneration for musical artists**.

## Engagement sessions

Engage with **Indigenous peoples** on how best to support Indigenous storytelling.

Engage with **racialized and ethno-cultural groups** on how best to support them.

# Conclusion

- This legislative proposal provides a much needed update to Canada's legislative and regulatory framework for broadcasting.
  - Flexibility and new tools to proactively respond to the rapidly changing realities of the broadcasting sector.
  - Strengthen support for Canadian creators, producers and broadcasters while also ensuring that Canadians see themselves reflected in the music and stories they consume.

# Appendices

# Broadcasting in Canada

Broadcasting means any transmission of programs, regardless of whether the transmission is scheduled or on demand ... for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place.

TV Broadcasters	Radio Stations	TV Providers	Online Broadcasters
<i>Definitions</i>			
Broadcast audiovisual content over public airwaves or through TV providers	Broadcast audio content over the radio	Provide consumers with access to cable or satellite TV services	Broadcast audio and audiovisual content over the internet
<i>Examples</i>			
Examples include: TVA, CITYTV, GLOBAL, CBC-Radio Canada (TV)	Examples include: Local Radio, CBC-Radio Canada (Radio One and Two)	Examples include: Vidéotron, Rogers Cable, Bell Fibe, Eastlink	Examples include: Crave, Tou.tv, Netflix, Qub Musique, Disney Plus

# CRTC

- The CRTC is an arm's-length, administrative tribunal.
- It uses the tools and powers provided in the *Act* to make independent regulatory decisions to implement the broadcasting policy of Canada.
- These decisions take into account input provided by stakeholders and the public through public proceedings.
- The CRTC's regulatory independence helps to ensure that the Canadian broadcasting system remains independent and supports a free and democratic society.

# Broadcasting and Telecommunications Legislative Review (BTLR)

- In 2018, the Ministers of Innovation, Science and Industry and Canadian Heritage tasked an independent panel of experts to review the *Broadcasting Act* and the *Telecommunications Act*.
- The final report of the expert panel, including a list of 97 recommendations, was published in January 2020.
- This report, and the consultations conducted as part of the report, were key to informing the Bill to amend the *Broadcasting Act*.